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IN THE
COURT OF APPEALS OF INDIANA

IN RE THE MARRIAGE OF:	)	
ROGER D. EDWARDS,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 46A05-0607-CV-367
	)	
MARY L. EDWARDS,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE LA PORTE CIRCUIT COURT
The Honorable Robert W. Gilmore, Judge
The Honorable Thomas G. Pawloski, Magistrate
Cause No. 46C01-0407-DR-182

January 31, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Roger Edwards appeals the amount of the marital estate awarded to his former wife, Mary Semala. It was an abuse of discretion for the trial court to award Mary more than half of the marital assets without a finding that an equal division of marital assets would not be just and reasonable. The trial court erred in denying Roger interest on the judgment while his appeal was pending, because post-judgment interest is statutorily mandated on money judgments, including those in dissolution orders.

We reverse and remand with instructions.

FACTS AND PROCEDURAL HISTORY

In October 1994, Mary received a $70,000 settlement from a prior divorce and deposited the funds into a joint account she held with Roger. On November 25, 1994, Roger and Mary purchased a house together for $120,000. The $48,000 down payment for the house came from the joint account. They married on February 24, 1995. In September 1997, Roger and Mary sold the house for $164,900 and, with the proceeds, purchased a house for $125,500. The down payment on this house was $80,000. Mary filed a dissolution petition in August 2004, and the divorce was final on November 4, 2005.

The parties divided their checking and savings accounts equally between them, and then submitted the remaining assets for division by the trial court. The trial court determined the remaining marital assets totaled $136,554, including $98,800 of equity in the marital home. The trial court awarded Mary $92,750 and $43,804 to Roger. The trial court determined:

> 14. Before dividing the marital estate, the wife should have set over to her the rather substantial cash she brought with her to her second marriage and which she used as a down payment for the initial marital residence. Accordingly, she should have set over to her as a credit the sum of [$48,946] of equity in the current marital home. This leaves the marital estate of [$87,608] to be divided equally between the parties, with each party receiving [$43,804].
>
> 15. [Wife awarded horse trailer, two quarter horses with tack, annuity, personal property, and vehicle, with a total value of $27,039.]
>
> 16. [Husband awarded two vehicles, 401(k), retirement account, and personal property, with a total value of $10,715.]
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> * * * * *
>
> 19. To equalize the division of property, the husband is granted a judgement [sic] against the wife in the amount of [$33,089].[1] The wife should be directed to attempt to refinance the marital residence which should be set over to her free and clear of the claims of the husband within sixty days of the date of this order to obtain the funds to satisfy the judgement [sic] entered in the husband's favor. In the event she is unable to do so, the marital residence shall be sold and from the net proceeds the husband should receive the sum of [$33,089].

(App. at 160-61) (footnote added).

Roger filed a motion to correct error. The trial court denied his motion in part, stating:

> 2. The husband takes issue with the fact that the Court considered the purchase of the parties['] first marital home which purchase occurred approximately three months prior to the marriage. The wife did in fact make the down payment of [$48,946] for this home.
>
> 3. It has been held that it is contrary to public policy to ignore a wife's contribution to assets prior to a marriage and during the period of co-habitation, when the parties do, in fact, later marry. Chestnut v. Chestnut 499 NE2d 783 (1986). Accordingly, the Court did not err when it considered the wife's down payment of [$48,946] for the parties' first marital home. That portion of the Motion to Correct Errors [sic] should be denied.

(*Id.* at 172-73.)

[1] The original order provided for a payment of $27,689 to Roger. The court corrected this computational error following Roger's motion to correct error. (App. at 173.)

After Roger initiated this appeal, Mary filed a motion to stay execution of judgment pending the appeal. The trial court stayed the judgment, allowing Mary sixty days following the appellate process to refinance the house and pay Roger. At Mary's request, the trial court also ordered "No interest shall accrue on said judgment." (*Id.* at 187.)

DISCUSSION AND DECISION

1. Division of Assets

The disposition of marital assets is an exercise of the trial court's sound discretion. *Hatten v. Hatten*, 825 N.E.2d 791, 794 (Ind. Ct. App. 2005), *trans. denied* 841 N.E.2d 180 (Ind. 2005). We review for an abuse of discretion a claim that the trial court improperly divided marital property. *Id.* In doing so, we consider the evidence most favorable to the trial court's disposition of the property, without reweighing the evidence or assessing the credibility of witnesses. *Id.* An abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court, or if the trial court has misinterpreted the law or has disregarded evidence of factors listed in the controlling statute. *Id.* Although a different conclusion might be reached in light of the facts and circumstances, we will not substitute our judgment for that of the trial court. *Id.*

The court's division of property includes property "(1) owned by either spouse before the marriage; (2) acquired by either spouse in his or her own right: (A) after the marriage; and (B) before final separation of the parties; or (3) acquired by their joint

efforts." Ind. Code § 31-15-7-4(a). An equal division of the marital property is presumed just and reasonable. Ind. Code § 31-15-7-5.

> However, this presumption may be rebutted by a party who presents relevant evidence, including evidence concerning the following factors, that an equal division would not be just and reasonable:
> (1) The contribution of each spouse to the acquisition of the property, regardless of whether the contribution was income producing.
> (2) The extent to which the property was acquired by each spouse:
> (A) before the marriage; or
> (B) through inheritance or gift.
> (3) The economic circumstance of each spouse at the time the disposition of the property is to become effective[.]
> (4) The conduct of the parties during the marriage as related to the disposition or dissipation of their property.
> (5) The earnings or earning ability of the parties as related to:
> (A) a final division of property; and
> (B) a final determination of the property rights of the parties.

Id. When ordering an unequal division of assets, the trial court should consider all of the relevant factors set out in the statute.[2] *Eye v. Eye*, 849 N.E.2d 698, 701 (Ind. Ct. App. 2006). If the trial court determines a party opposing an equal division has met his or her burden under the statute and it adequately records its reasons based on the evidence for an unequal division, we will affirm. *Keller v. Keller*, 639 N.E.2d 372, 374 (Ind. Ct. App. 1994), *trans. denied*.

Roger sought an equal division of the assets, including the equity in the house. Mary requested the trial court "give [her] a credit for the $50,000 down payment for the prior residence and then split the remaining equity in the house[.]" (Tr. at 14-15.)

[2] We note the pretrial statement of facts and issues Roger filed indicates support and maintenance were not at issue. Evidence concerning the parties' fiscal conduct during marriage was not presented. Accordingly, the trial court did not err in failing to otherwise consider these issues.

Accordingly, Mary was required to rebut the presumption an equal division of assets would be just and reasonable.

Since their relationship began, Mary and Roger "put [their] money in bank accounts together [and] paid for things out of the same bank accounts." (*Id.* at 39.) One month after Mary deposited $70,000 from the settlement of her first divorce into their joint account, they used $48,946 from the joint account to purchase the couple's first home prior to their marriage. Both parties worked on improvements to the first house. The proceeds from the sale of their first house were used as a down payment to purchase their second house. Of that down payment, Mary stated, "Fifty was from the previous marriage, and the remainder was from the profit we made off the [first] house." (*Id.* at 11.) The second house was refinanced at least once and an addition to the second house was funded by money the couple "borrowed together [and] still owe together." (*Id.* at 43.)

The trial court's order stated: "Before dividing the marital estate, [Mary] should have set over to her the rather substantial cash she brought with her to her second marriage and which she used as a down payment for the initial marital residence." (App. at 160.) There was no finding by the trial court that "an equal division of assets would not be just and reasonable." Ind. Code § 31-15-7-5. While the order following Roger's motion to correct error explains the trial court was attempting to take into account Mary's "contribution to assets prior to a marriage and during the period of co-habitation," (App. at 172), the court may not take that contribution into account unless it first determines "an equal division of assets would not be just and reasonable." Ind. Code § 31-15-7-5.

Therefore, we must reverse the court's division of assets and remand for the trial court to either follow the statutory presumption or set forth findings supporting a deviation from the presumption that an equal division is just and reasonable. *See Chase v. Chase*, 690 N.E.2d 753, 756 (Ind. Ct. App. 1998).

2. Interest

Roger initiated this appeal on March 28, 2006. On April 5, 2006, Mary filed a motion to stay execution of judgment pending appeal. In relevant part, the motion provided:

> 6. The appellate process will take many months and [Mary] therefore requests that the Court stay execution of the judgment entered against her in the amount of $33,089.00 for a period of sixty (60) days following the conclusion of the appellate process, which is consistent with this Court's November 7, 2005 Findings And Dissolution Decree wherein the Court granted [Mary] sixty (60) days to attempt to refinance the marital residence in order to satisfy the amount owed to [Roger].
> 7. [Mary] also requests an Order clarifying that no interest is accruing on the judgment entered against [Mary] and that the total amount owed to [Roger], whether from [Mary's] refinancing of the marital residence within sixty (60) days from the end of the appellate process or from the sale of the marital residence, is $33,089.00
> 8. [Roger] should not benefit from his own appeal of this Court's orders by receiving interest on the judgment entered in his favor.

(App. at 185.) The trial court granted Mary's motion to stay execution of judgment pending Roger's appeal on the same day and specified no interest would accrue on the judgment.[3] Roger does not contest the stay, but he asserts:

> However, the trial court purported to relieve Mary of paying interest on the judgment it awarded to Roger. This the trial court could not do since the original order made no provision that precluded Roger from receiving

[3] Roger filed a response to Mary's motion to stay on April 13, 2006, one week after the trial court granted Mary's motion.

> interest on the judgment once the 60 day period had passed. *Williamson v. Rutana*, 736 N.E.2d 1247, 1249 (Ind. Ct. App. 2000); *Irvine v. Irvine*, 685 N.E.2d 67, 71 (Ind. Ct. App. 1997); *compare*, *In re Marriage of Goossens*, 829 N.E.2d 36, 41-42, 43-44 (Ind. Ct. App. 2005).
>
> The trial court's attempt to relieve Mary from paying interest on the judgment, apparently as a penalty for Roger having taken this appeal, should be held to be beyond the court's jurisdiction or, at least, invalid as a matter of law.

(Br. of Appellant-Respondent at 14-15.)

Ind. Code § 24-4.6-1-101 provides: "Except as otherwise provided by statute, interest on judgments for money whenever rendered shall be from the date of the return of the verdict or finding of the court until satisfaction at . . . an annual rate of eight percent." Post-judgment interest is statutorily mandated for money judgments, including those in dissolution orders. *Williamson v. Rutana*, 736 N.E.2d 1247, 1249 (Ind. Ct. App. 2000) "Such interest may be awarded when a lump sum is due and payment is late, even though the decree does not provide for the payment of interest." *Id.* When the payment is not immediately due, this interest is "mandatory only from the date the payments were due." *Goossens v. Goossens*, 829 N.E.2d 36, 42 (Ind. Ct. App. 2005).

Interest should have accrued on the judgment in Roger's favor and the trial court erred in ordering otherwise. On remand, the trial court should award interest on the judgment as modified from the original due date. *See Beam v. Wausau Ins. Co.*, 765 N.E.2d 524, 535 (Ind. 2002) ("The modified amount is the amount that the trial court should have entered on the original date, and post-judgment interest should run on the modified amount from the date of the original verdict."), *reh'g denied*.

CONCLUSION

The trial court abused its discretion in awarding Mary more than half of the marital estate without finding an equal division of the assets would not be just and reasonable. Thus we reverse. The trial court also erred by not awarding Roger post-judgment interest on the award. We direct the trial court on remand to either divide the marital estate equally or explain the unequal division, and to award Roger interest on the appropriate amount from the date of the original judgment.

Reversed and remanded with instructions.

BAILEY, J. and RILEY, J. concur.